



Advanced Behavioral Health, Inc.

**PROVIDER AGREEMENT
For
Money Follows the Person/Mental Health Waiver Services**

by and between:

Provider Name
Address

and

Advanced Behavioral Health, Inc.
213 Court Street, Middletown, CT 06457

This Agreement, between the above named Provider organization (hereinafter referred to as “Provider”) and Advanced Behavioral Health, Inc. (ABH) shall become effective as of the date this Agreement is executed by Advanced Behavioral Health (hereinafter called the execution date).

I. Recitals

WHEREAS: ABH is contracted with the Department of Mental Health and Addiction Services (DMHAS) and the Department of Social Services (DSS) to support the administration of the mental health portion of the Money Follows the Person (MFP) program and the Mental Health (MH) Waiver program that serves adults with serious mental illness who are being discharged or diverted from nursing home care, receiving Connecticut Medicaid benefits, and meet DMHAS’ and DSS’ MFP and/or MH Waiver program eligibility criteria (hereinafter referred to as “Participant”). ABH is not responsible for the direct provision of MFP/MH Waiver Services. ABH provides fiscal intermediary services to support a Participant’s receipt of the program services.

WHEREAS: Provider desires, and is capable and willing, to provide certain MFP/MH Waiver Services (hereinafter referred to as “Services”), as hereinafter defined, to such Participants, all pursuant to the terms hereof and the applicable provisions of the MFP/MH Waiver as may be in effect at the time and from time to time; and

WHEREAS: The Provider has completed an MFP/MH Waiver Credentialing Application including the required supporting documents which has been reviewed by DMHAS and credentialed by ABH for a specific Waiver Service(s).

NOW THEN: In consideration of the foregoing and the mutual promises set forth herein, and intending to be legally bound hereby, Provider and ABH agree as follows:

II. Definitions

- A. "Claim Form": means a form used to request reimbursement for MFP/MH Waiver Program Services.
- B. "Clean Claim": A claim form for service(s) or goods, a line item of a Services, or all Services and/or goods for a Participant contained on one bill which can be processed without obtaining additional information from the Provider of service(s) or a third party. A Clean Claim does not include a claim from a Provider who is under investigation for fraud or abuse, or a claim under Medical Necessity review.
- C. "Credentialing and Re-credentialing": the processes by which ABH evaluates a Provider's qualifications and competence to provide Services to Participants.
- D. "DMHAS": the State of Connecticut Department of Mental Health and Addiction Services or its designee.
- E. "DPH": the State of Connecticut Department of Public Health or its designee.
- F. "DSS": the State of Connecticut Department of Social Services or its designee.
- G. "EDS": Electronic Data Systems, a DSS vendor.
- H. "Effective Date": The date from which a Provider can be reimbursed for contracted Services.
- I. "Enrollment": The credentialing procedures to register Providers into the Network Directory.
- J. "Execution Date": the date this Agreement is executed by Advanced Behavioral Health.
- K. "Fiscal Intermediary": an organization contracted with DSS and DMHAS to perform various administrative functions and assist Participants who choose to direct recovery assistant services.

- L. “Government Authorities”: means all federal, state, and municipal authorities that may administer or regulate, now or in the future, the MFH/MH Waiver or related program for which payment may be made under this Agreement, including, but not limited to, Centers for Medicare and Medicaid Services (“CMS”), DSS, DMHAS, DPH, and any designees thereto. ABH and EDS are government designees included in this definition.
- M. “Guiding Documents”: Protocols written By DMHAS and given to ABH for the management of Services.
- N. “Medicaid”: The Connecticut Medical Assistance Program operated by the State of Connecticut Department of Social Services under Title XIX of the Federal Social Security Act, and related State and Federal rules and regulations (the same as “Medical Assistance”) as amended from time to time.
- O. “MFP/MH Documents”: means this Agreement, the MFH/MH Waiver Provider Manual, the Credentialing Application, and any other documents promulgated in connection with the MFP/MH Waiver or related program for which payment may be made under this Agreement, including without limitation, documents relating to credentialing, Participant eligibility, funding, the provision of services such as quality assurance, utilization, reporting, rules, regulations, policies, protocols and payment requirements.
- P. “Participant”: means an adult with serious mental illness that is being discharged or diverted from nursing home care, receiving Connecticut Medicaid benefits, and meets DMHAS and DSS eligibility criteria.
- Q. “Provider Manual”: Any guide developed by ABH outlining the protocols and procedures that are to be followed with respect to MFP/MH Waiver Services, or any successor document developed for that purpose, including any changes or modifications made to such Provider Manual from time to time.
- R. “Quality Assurance” or “Quality Management”: means processes designed to objectively and systematically monitor and evaluate quality, timeliness and appropriateness of care and services including both clinical and administrative functions to pursue opportunities to improve care and to resolve identified problems in any of these services. From time to time, ABH may change policies and procedures related to the Quality Assurance/Quality Improvement Program. ABH has no direct control over the treatment of any Participant. ABH does not perform Utilization Management.
- S. “Self Directed Employer”: means a Participant who exercises decision making authority over hiring/firing an individual or selecting a non-state operated Provider to provide Recovery Assistant Services.

- T. “Services”: means the home and community based services (“HCBS” services) subject to the terms and conditions of this Agreement for a Participant with mental illness enrolled in the Money Follows the Person program or the Mental Health Waiver program identified in Schedule(s) attached hereto.
- U. “Service Unit”: means the interval of time that each MFP/MH Waiver program service can be authorized, delivered and billed
- V. All terms not defined herein shall have the meaning ascribed to the them in the Provider Manual.

III. Services

- A. Provider shall provide, and ABH shall facilitate payment for, the HCBS services subject to the terms herein and specifically identified in the Schedules attached hereto. Those Services may include some or all of the following:

Assertive Community Treatment	Community Support Program
Home Accessibility Adaptations	Peer Support
Recovery Assistant	Short Term Crisis Stabilization
Supported Employment	Specialized Medical Equipment
Transitional Case Management	Non-Medical Transportation

- B. Detailed definitions of these Services are contained on each MFP/MH Waiver Program Service Rate Schedule(s) attached hereto.
- C. Services may be added or removed by duly amended and executed Schedules.
- D. Provider acknowledges and agrees that its provision of any Services hereunder does not entitle Provider to participate in or continue to participate in any other contract entered into with ABH, DSS or DMHAS or any other payor or to have any other status or rights except as is expressly provided herein.

IV. Provider’s Obligations, Responsibilities and Performance Measures

- A. **Program Requirements:** Provider agrees to be bound and abide by any and all terms and conditions contained in the MFP/MH Documents as well as any other requirements that may be imposed by Government Authorities. This includes any funding requirements including Medicaid, and applicable Regulations of Connecticut State Agencies, inclusive for the purpose of establishing, expanding or continuing one or more eligible Services for mental health or substance use disorders as well as all other applicable state and federal laws and regulations. Provider acknowledges and agrees that it is not only bound by the above existing as of the Execution Date, but is also bound by any subsequent changes.

- B. Delivery of Services:** Provider may only provide Services that fall within the scope of its licensure and/or certification, and for which it is credentialed in accordance with ABH's credentialing criteria and approved by ABH. The Provider agrees to provide Services in accordance with proper practices of care, rules of ethics and conduct promulgated by all applicable regulatory agencies and professional bodies. Provider agrees to provide its Services to Participants as described herein, such Services to be as set forth in the Service Rate Schedule(s) attached hereto. Provider shall not start providing Services until authorized by ABH to do so.
- C. Service Location and Hours:** Provider shall establish and maintain appropriate coverage to assure that Services, as required, are available and accessible in a prompt manner that ensures timely response and reasonable hours of service, including notifying ABH of impediments in Provider's capacity to service Participants.
- D. Qualified Personnel:** Provider certifies that all of its staff, agents and employees are familiar with and have agreed to be bound by all of the terms and conditions of this Agreement and the schedules attached hereto. This obligation includes abiding by any and all MFP/MH Documents. Provider shall include provisions in its contract/hiring agreement with any of its staff, not limited to employees, performing hereunder, incorporating all pertinent terms of job qualifications or performance standards or contractual/agreement obligations such as exist or may exist from time to time. The Provider shall ensure that staff employed by or associated with the Provider are appropriately licensed, certified and/or qualified in accordance with Connecticut State Law and that they satisfy all ABH, DSS and DMHAS credentialing and /or re-credentialing standards.
- E. Collaboration:** Provider agrees to accept training and consultation and to work in collaboration with DMHAS staff in regard to the Services provided.
- F. Professional Requirements:** The Provider shall assist ABH with inquires and reports it may make to the National Practitioners' Data Bank or any other professional disciplinary agency with jurisdiction over the Provider and shall require that its malpractice carrier release information requested by ABH in connection with the credentialing and re-credentialing procedures. The Provider agrees to satisfy ABH's credentialing and re-credentialing standards in order to continue to provide Services according to the terms and conditions of this Agreement.
- G. Satisfaction of Performance:** Provider agrees that it shall, consistent with ABH's administrative and coordination roles under the MFP/MH Waiver, address to ABH's, DSS' and DMHAS' satisfaction any concerns as to Provider's performance of the Services.

- H. **Reports:** Provider shall provide to ABH, in a timely manner and in the medium specified by ABH, all statistical, financial and programmatic information requested or necessary for ABH to fulfill its obligations to any Government Authority and/or hereunder. Delivery of such information shall comply with all applicable state and federal confidentiality laws. In addition, Provider shall submit all reports and data as may be required or contemplated under any MFP/MH Document by the designated due date, including:
- i) completion of Provider Satisfaction Surveys;
 - ii) fulfilling service data reporting requirements; and
 - iii) timely and accurate submission of utilization, admission, and discharge data.
- Provider shall provide notification within the required timeframes whenever a Participant begins and terminates Services.

Provider agrees that failure to provide complete timely and accurate data in the specified medium may result in recouping of funds paid to the Provider, withholding future payments, and/or termination of this Agreement.

- I. **Cultural Needs:** Provider shall provide Services to Participants that are responsive to and address the culturally diverse needs of Participants receiving such Services. Provider further agrees to furnish any information deemed necessary for assessing compliance with this provision.
- J. **Non-Discrimination:** Provider shall not discriminate against the Participant because he or she is eligible for the MFP or MH Waiver Services, or based upon source of payment, color, race, sex, age, national origin, religion, place of residence, health status, health care needs, HIV status, physical, mental or development disability or handicap, sexual orientation, marital status or type of illness or condition in rendering Services in accordance with this Agreement. The Provider shall cooperate and comply with the Americans With Disabilities Act (“ADA”) and ABH’s policies and procedures pursuant to the ADA in order to ensure that Services are readily accessible and usable by Participants with disabilities, as required by the ADA. The Provide shall treat the Participant in the same manner and in accordance with the same standards and priority as they treat their other service recipients. Care will be provided in a manner to support positive Provider-Participant relationships, striving for a high level of Participant satisfaction.
- K. **Refusal of Service and Treatment/Noncompliance with Service and Treatment Recommendation:** Provider acknowledges and agrees that Participant has the right to refuse procedures, medicines, or courses of treatment. A Participant has the right to participate in decision-making regarding his or her care. If the Participant refuses care, the Provider shall inform the Participant of the consequences of the noncompliance with the recommended course of care and seek to resolve the disagreement with the Participant and/or the Participant’s family or other person acting on behalf of

the Participant. The resolution of the disagreement shall include but not be limited to helping the Participant explore the Services of other providers.

- L. **Complaint and Grievance:** Provider must have a complaints and grievances process and inform each Participant seeking or receiving Services about how to use the process, including how to access the DMHAS Complaint, Grievance and Appeal system as prescribed in the Provider Manual.
- M. **Fair Hearing:** Participants will also have recourse to the DSS Fair Hearing process, as well as rights to judicial relief as specified in Chapter 54 of Connecticut General Statutes. Complaint resolution may include temporary suspension of authorization or payments to a specific location or Provider and/or termination of this Agreement.
- N. **Network Directory:** The Provider agrees to permit any Government Authority to include relevant information about the Provider and Provider staff including, but not limited to names, addresses, telephone numbers, email addresses, languages spoken in provider directories and other materials related to the MFP/MH Waiver Services Program and furnished to Participants covered by the MFP/MH Waiver during the term of this Agreement and for a reasonable period thereafter until new material is made available to such Participants.
- O. **Maintenance and Accuracy of Records.**
 - 1. The Provider agrees to maintain the following records for the greater of seven (7) years from the date of service or (6) years from the termination or expiration of this Agreement:
 - a) Complete and accurate fiscal records;
 - b) Complete and accurate service records for all Participants to whom the Provider has rendered Service(s) and/or whom the Provider has claimed and received payment; and
 - c) Such records as are necessary for evaluation of quality and timeliness of the Services.
 - 2. The Provider agrees to maintain the above records in accordance with applicable security and privacy laws.
- P. **Access to Records:** Any Government Authority shall have the right to audit, evaluate, or inspect any books, contracts, medical/service records, patient/ Participant care documentation, and other records of the Provider that pertain to:

1. The Service(s) covered under this Agreement;
2. Reconciliation of benefits liabilities;
3. Determination of amounts payable;
4. Medical/service audit or review;
5. Utilization and/or Case review; or
6. Other relevant matters as such person conducting the audit, evaluation or inspection deems necessary.

Q. Audits, Evaluations or Inspections

1. The Provider shall cooperate fully with any such audits, evaluations or inspections and, upon request, shall make available staff to assist in audit, and provide space on premises. The right described herein shall extend to the greater of six (6) years beyond the termination date of this Agreement or the date of service, provided, however, that such access may be required for a longer period of time if any Government Authority determines that:
 - a) There is a special need to retain a particular record or group of records for a longer period and the Government Authority provides notice at least thirty (30) days before the normal disposition date;
 - b) There has been a termination, dispute, fraud, or similar fault, in which case the retention may be extended beyond six (6) years from the date of any resulting final resolution of the matter; or
 - c) There is a reasonable possibility of fraud, in which case it may perform the inspection, evaluation, or audit at any time.
2. For the purpose of conducting the above mentioned activities, the Provider shall make available its premises, physical facilities and equipment, records relating to the Participant and any additional relevant information that ABH, CMS, DMHAS or DSS or their designees may require.
3. The Provider also agrees to establish procedures to ensure timely access by Participant's to medical/service records and other information pertaining to their care or treatment.

R. Notice

1. Provider agrees to notify ABH in writing within five (5) business days after learning of any of the following:
 - a) Any significant changes from all the information provided in the Credentialing Application.
 - b) Any significant changes from the information provided in the EDS provider enrollment package.

- c) Any action taken to restrict, suspend or revoke Provider's license or certification or any member of Provider's staff's license or certification.
- d) Any civil or criminal claim against Provider or any member of Provider's staff and all relevant information (other than privileged information absent an appropriate waiver) concerning such claim requested by ABH, and by separate notification, the final disposition thereof, provided that the provisions of this Section shall apply except as limited by law and except to the extent compliance therewith may adversely affect Provider's or Provider's staff's insurance coverage.
- e) The amendment or termination of any insurance policy required hereunder. Provider agrees that ABH will not approve payment for Services delivered on and after the insurance expiration date.
- f) Any criminal action, administrative proceedings or professional disciplinary actions against Provider or any member of its staff.
- g) Any written complaint from any Participant's under the MFP/MH Waiver with respect to the quality or accessibility of Provider's Services or the performance of the Provider or any of its staff.
- h) Any sanction(s) by, or loss of the right to participate in, the Medicare or Medicaid program.

V. ABH's Obligations

A. **Fiscal Intermediary:** ABH shall act as the Fiscal Intermediary (hereto referred to as "FI") for the MFP/MH Waiver program. ABH's duties are to provide:

1. Provider outreach and recruitment;
2. Recovery Assistant certification/recertification training;
3. Credentialing, re-credentialing and enrollment;
4. Eligibility verification and service authorization;
5. Claims processing and payment;
6. Quality management;
7. Provider and Self Directed Employee Manual development; and
8. Reporting and compliance monitoring.

B. **Quality Programs:** ABH will maintain Quality Improvement and Service Management Programs which shall include provider credentialing and re-credentialing and service policy development as more fully described in the Provider Manual.

C. **Payment:** ABH shall not be liable for payment beyond processing funds from DSS and DMHAS.

- D. **No Clinical Responsibility:** ABH shall not be responsible for or engage in any clinical aspect of the provision of Services hereunder.
- E. **Confidentiality:** ABH will protect the confidentiality of Social Security numbers and all nonpublic personal information and limit access to Social Security numbers and all nonpublic personal information in accordance with Conn. Gen. Stat. §§ 42-470 and 471.

VI. Liability

- A. **Provider Indemnification of ABH:** Provider shall be solely responsible for all Services hereunder and shall indemnify and hold harmless ABH, including its staff, employees, agents, independent contractors, officers, directors, successors, assigns, and individuals designated by ABH to provide administrative and management Services for the MFP/MH Waiver program, from and against any liabilities, costs, damages, losses, expense or consequences whatsoever, including reasonable court or arbitration costs and legal and other professionals' fees, arising in any manner from any act, action or failure to act, by the Provider or its staff, including employees, agents and independent contractors, in providing, or not providing as the case may be, Services hereunder. This clause shall survive expiration or termination of this Agreement regardless of the cause giving rise to the expiration or termination.
- B. **Provider Indemnification of the State of Connecticut:** Provider shall indemnify, defend and hold harmless the State of Connecticut and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all:
 - 1. claims arising directly in connection with the Agreement, including the acts of commission or omission (collectively the "Acts") of Provider and its staff, including employees, agents and independent contractors; and
 - 2. liabilities, damages, losses, costs and expenses, including but not limited to attorneys' and other professionals' fees, arising, directly or indirectly, in connection with claims, Acts or the Agreement. Provider shall use counsel reasonably acceptable to the State in carrying out its indemnification and hold-harmless obligations under this Agreement. Provider's obligations under this Section to indemnify, defend and hold harmless against claims includes claims concerning confidentiality of any part of or all of the bid or any records, and intellectual property rights, other propriety rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the performance of the Agreement.

3. This clause shall survive expiration or termination of this Agreement regardless of the cause giving rise to the expiration or termination.

C. ABH Indemnification of Provider: ABH shall be solely responsible for and shall indemnify and hold harmless Provider, including its staff, agents, independent contractors, officers, directors, with respect to any costs, damages, losses, expense or consequences, including reasonable court or arbitration costs and legal fees, directly caused by ABH's uncured material breach of any of its contractual/agreement obligations under the MFP/MH Waiver program. This clause shall survive termination regardless of the cause giving rise to the termination.

D. Insurance

1. Provider shall maintain in effect and submit evidence of general liability and professional liability naming the State of Connecticut and Advanced Behavioral Health, 213 Court Street, Middletown, CT 06457 as an additional insureds, in the amount required under the MFP/MH Waiver program, provided such coverage shall be no less than \$1 million per occurrence and \$3 million aggregate per year. Such policy shall provide for coverage for liability arising out of an alleged act, error or omission in connection with the performance of Services rendered hereunder by Provider. If any such insurance policy is written on a "claims-made" basis, such policy shall have a retroactive date on or before the date of this Agreement and following the expiration or sooner termination of this Agreement. The Provider shall require the insurance company to give ABH prior written notice of any cancellation or change to such policy(ies) not less than thirty (30) days prior to such cancellation or change. The Provider shall upon request and upon any policy renewal or change submit evidence of same to ABH.
2. If Provider has a "claims made" policy, Provider shall, upon expiration or sooner termination of this Agreement, purchase a "tail" policy or obtain replacement coverage which insures for prior acts, including losses arising from occurrences during the term of this Agreement. Such "tail" policy shall have the same limits as the claims made policy and shall extend the claims reporting period for the longest period for which coverage is available. The Provider shall require the insurance company to give ABH prior written notice of any cancellation or change to such policy(ies) not less than thirty (30) days prior to such cancellation or change.
3. The Provider shall maintain in effect and submit evidence of automobile insurance coverage for when the Provider will be

transporting the Participant. The Provider must ensure that a current driver license is held by the person transporting the Participant.

4. Provider shall maintain in effect and submit evidence of workers' compensation insurance.

VII. Default by the Provider

- A. **Contractual Remedies:** If the Provider defaults as to, or otherwise fails to comply with, any of the conditions of this Agreement ABH may:
 1. Withhold payments until the default is resolved to the satisfaction of ABH;
 2. Temporarily or permanently discontinue Services under the Agreement;
 3. Terminate this Agreement;
 4. Take such other actions of any nature whatsoever as may be deemed appropriate for the best interests of the state or the program(s) provided under this Agreement or both; or
 5. Any combination of the above actions.
- B. **Other Remedies:** In addition to the rights and remedies granted to ABH by this Agreement, ABH shall have all other rights and remedies granted to it by law in the event of breach of or default by the Provider under the terms of this Agreement.
- C. **Default Notice:** Prior to invoking any of the remedies for default specified in this paragraph, except when ABH deems the health or welfare of service recipients is endangered as specified in of this Agreement, ABH shall notify Provider in writing of the specific facts and circumstances constituting default or failure to comply with the conditions of this Agreement and proposed remedies. Within five (5) business days of receipt of this notice, the Provider shall correct any contractual defaults specified in the notice and submit written documentation of correction to the satisfaction of ABH or request in writing a meeting with ABH. Any such meeting shall be held within five (5) business days of the written request. At the meeting, the Provider shall be given an opportunity to respond to the ABH's notice of default and to present a plan of correction with applicable time frames. Within five (5) business days of such meeting, ABH shall notify the Provider in writing of its response to the information provided including acceptance of the plan of correction and, if ABH finds continued contractual default for which a satisfactory plan of corrective action has not been presented, the specific remedy for default ABH intends to invoke. This action of ABH shall be considered final.

- D. If at any step in this process the Provider fails to comply with the procedure and, as applicable, the agreed upon plan of correction, ABH may proceed with default remedies.

VIII. Billing and Compensation

- A. **Claim Submission:** Provider shall submit timely, accurate and complete billing information to ABH in accordance with terms of this Agreement, Medicaid and the MFP/MH Documents. Fees will be paid by ABH according to the MFP/MH Waiver Service Rate Schedule(s), attached hereto, on a timely basis.
- B. **Clean Claims:** Provider agrees that ABH shall process a Clean Claim for payment.
- C. **Rejected Clean Claims:** Provider agrees to re-submit claims that were rejected as not compliant with the Clean Claim definition within forty-five (45) days from the rejection date.
- D. **Payment Limitations:** Provider agrees that ABH shall:
1. Reduce the Service Units and process payment only up to the maximum Service Units allowable under a Recovery Plan for the dates of service if a Claim Form requests payment for more than the maximum Service Units allowable under a Recovery Plan;
 2. Pay the lesser of the billed amount or that specified on the current Service Rate Schedule for each Service Unit identified to be paid on the specific Service Claim Form;
 3. If a payment is reduced or denied, include an explanation for the reduction or denial of such payment. Provider may appeal any such reduction or denial in accordance with Section "E" below; and
 4. Process a non-cash voucher to a state operated Provider; and Process a cash payment to a non-state operated Provider and/or a Recovery Assistant employee
- E. **Payment Dispute Resolution:** Upon ABH's determination that a Provider and/or Recovery Assistant employee submitted a Claim Form and/or a time sheet for which payment must be reduced or denied, ABH shall:
1. Notify the Provider and/or the Self Directed Employer and the Recovery Assistant employee in writing of the reason(s) for payment reduction or denial;

2. As requested by the Provider, the Self Directed Employer and/or the Recovery Assistant employee, provide reasonable telephone assistance and training regarding the reason(s) for non-payment stated in the written notification and resolve such non-payment; and
 3. Permit the Provider to file a written appeal with ABH. ABH shall resolve the appeal in accordance with the DMHAS Guiding Documents. ABH may request an opinion of DSS if the reason for payment reduction or denial is related to Medicaid requirements or requirements under the MFP/MH Waiver program.
- F. Payment as Satisfaction for Services:** Provider agrees to comply with all policies requiring authorizations of Services and timely submission of claims. As indicated in the attached Service Rate Schedule(s), MFP/MH Waiver payments are considered payment in full for the Service recipient, time period and location indicated. Approvals and payments are not transferable to other Participants, timeframes, or locations.
- G. Coordination of Benefits:** Provider agrees to comply with the MFP/MH Waiver requirement that funds used in the MFP/MH Waiver are based on a “payor of last resort” policy. This means that the Provider will not accept MFP/MH Waiver payment if they are receiving any other third party payment for the service being provided to the Participant.
- H. Recoupment and Right to Offset:** Provider agrees that ABH will recoup or offset payments for the MFP/ MH Waiver Services delivered when the Provider was also reimbursed from any other municipal, state, private or federal third party payment. Furthermore, ABH reserves the right to recoup or offset prior and future payments if it is determined that Services were not properly provided under the MFP/MH Waiver or if required data reporting is not timely or accurate or if the Participant did not receive all Services covered by the ABH payment.
- I. Limited Payment Sources/No Independent Obligation to Pay Claims:** Provider acknowledges that all payments to be made hereunder to Provider are to be made solely from funds made available to ABH by DSS and DMHAS for the MFP/MH Waiver program and are subject to DSS and DMHAS provision of such funds to ABH. ABH shall have no obligation to make any payment to Provider except for payments made in accordance with the terms hereof from DSS or DMHAS funds.
- J. Determination of Eligibility:** Compliance with verification procedures and confirmation of an individual’s status as a Participant, or lack thereof, does not constitute a guarantee of eligibility. In the event that the Provider arranges for the provision of what would have been a Service to an individual based upon compliance with Participant verification procedures, and ABH

subsequently determines that such individual was not entitled to coverage as a Participant, then ABH shall notify the Provider of that individual's ineligibility as a Participant. Should any discrepancy occur regarding the eligibility of a Participant, the DSS Automated Eligibility Verification System (AEVS) shall determine eligibility. ABH shall be permitted to recover payments to or financial allocations made to the Provider for that individual retroactive to the day on which the individual became ineligible as a Participant; as set forth herein, and subject to the limitations set forth below, and ABH shall have no further liability to the Provider for any Services rendered on or after the date of ineligibility. In such event, the Provider may seek payment from such individuals for whom Services were arranged on or after the date on which the individual became ineligible for coverage only so long as the incorrect verification of ineligibility can be shown to be the result of a fraud perpetrated by such person and not due to any error on the part of ABH, DSS, or DMHAS. In such event, the Provider may seek payment from such individuals for whom Services were arranged on or after the date on which the individual became ineligible for coverage.

- K. **No Retroactive Payments:** Provider agrees that ABH shall not pay for services that were rendered/delivered prior to the effective date of each contracted service.

IX. Independent Contract Relationship of the Parties

- A. Nothing in this Agreement shall be construed to create a relationship of employer and employee, partner, joint venture or principal and agent. The performance of Services by Provider and Provider's staff under this Agreement shall be under the exclusive direction and control of Provider. ABH shall not assume any responsibility or liability for the performance of Provider or Provider's staff.
- B. Provider acknowledges that ABH is not a Provider of substance abuse, behavioral health or any other health care services.

X. Term and Termination.

- A. **Term:** The term of this Agreement shall commence on the Execution Date and continue in effect until the termination of the MFP/MH Waiver as established in contractual terms and funding arrangements by DSS, DMHAS and ABH, unless sooner terminated as provided below.
- B. **Termination:** Notwithstanding the foregoing, this Agreement may be terminated and/or suspended in whole or in part as follows:
 - 1. **Termination without Cause.** Either party may terminate this Agreement without cause upon ninety (90) days' prior written notice to the other party. The written notice shall include a specific termination

date. Within fifteen (15) business days of the termination date that Provider either gives or receives the written notice of termination, it shall provide ABH with a list of those Participants who are still seeking treatment in this program from Provider.

2. **Other ABH Rights:** ABH may terminate and/or suspend this Agreement in whole or in part as follows:
 - a) ABH may terminate this Agreement or any specific Service Rate Schedule immediately upon the revocation or suspension of: i) Provider's license or certification(s) required to operate a Service; ii) ABH Credentialing; iii) insurance; iv) or upon notice of noncompliance with any applicable local, state and federal licensing, zoning, building, health, fire and safety regulations or ordinances, as well as any standard or criteria of any Government Authority.
 - b) ABH may terminate this Agreement immediately upon the cancellation or termination of its agreements with any of the funding agencies for the MFP/MH Waiver program.
 - c) ABH may terminate this Agreement immediately if advised to do so by any Government Authority.
 - d) ABH may terminate this Agreement or any specific service rate schedule if there are substantiated concerns regarding the quality of Provider's Services or the performance of any of Provider's staff, which are not corrected by Provider, as demonstrated to the reasonable satisfaction of ABH, within five (5) business days of ABH's provision of notice to Provider as to such concerns; and in accordance with the requirements in the Provider Manual.
 - e) ABH may suspend or terminate this Agreement or any specific service rate schedule immediately when there are substantial concerns regarding the quality of Provider's Services or the performance of any of Provider's staff when the health or welfare of service recipients is endangered.
 - f) ABH may terminate this Agreement immediately if DMHAS, DSS or EDS fails to provide adequate payment to ABH or fails to sufficiently contract for MFP/MH Waiver Services. In such instance, ABH will work jointly with Provider to develop and implement appropriate transition plans for Participants.
3. **Provider Rights:** Provider may terminate this Agreement based upon an uncured material default by ABH as to ABH's performance of any of its obligations hereunder which default is not attributable to the acts or actions of any third party or other event beyond the control of ABH

and which default ABH has failed to cure or commence curing within forty five (45) days of Provider's provision of notice to ABH as to such default.

4. **Mutual Agreement:** The parties may mutually agree to terminate this Agreement based upon the Provider's cessation of Services that are the subject of Provider's performance under this Agreement, provided that Provider provides ninety (90) days notice to ABH, and will work jointly with ABH to develop transition plans for the Participant's.
5. **Continuation of Services:** Notwithstanding anything to the contrary contained herein, Provider hereby agrees that, upon termination of this Agreement for any reason, it shall, continue to provide Services to Participants whom it is then actively servicing and has accepted payment.

XI. Miscellaneous

- A. **Entire Agreement:** This Agreement together with any attachments, exhibits, supplements, addenda, amendments, or modifications (which attachments, exhibits, supplements, addenda, amendments, or modifications are incorporated herein and made a part hereof) contain the entire understanding hereto with respect to the subject matter hereof and cancels and supersedes all understandings and agreements between such parties, whether oral or hereof.
- B. **Automatic Amendment:** If at any time during the term hereof any city, state or federal statutes or regulations or any governmental or regulatory agency or body governing care service plans require or mandate any clarification of the terms and conditions of this Agreement, this Agreement shall be deemed to be automatically amended to conform to the requirements of such statutes, regulations or governmental or regulatory body.
- C. **Amendments:** This Agreement may be amended or modified upon the written agreement of the parties; provided, however, that nothing stated herein shall limit the right of either party to terminate this Agreement in accordance with the terms set forth herein. Moreover, it is agreed as follows:
 1. Revisions by ABH from time to time of its quality improvement, Provider Manual, and other MFP/MH Documents outside of this Agreement, shall not constitute modifications, amendments or alterations subject to this Agreement. ABH agrees to make best efforts to provide the Provider with thirty (30) days prior written notice of such changes.

2. The Provider shall submit to ABH in writing any proposed revision to this Agreement and ABH shall notify the Provider of receipt of the proposed revision.
3. Agreement amendments must be in writing and shall not be effective until executed by both parties to the Agreement.
4. No amendments may be made to a lapsed Agreement.

D. Exclusive Property: The Provider acknowledges and agrees that this Agreement, all attachments, exhibits or schedules referenced or included herein and all documentation and work products prepared hereunder, are and shall remain at all times notwithstanding any termination of this Agreement, confidential and the exclusive property of ABH. Provider shall not discuss or divulge any of the terms of foregoing without the express written consent of ABH, and ABH shall be entitled to pursue all available legal and equitable remedies to enforce Provider's compliance with these confidentiality commitments. Notwithstanding and without limitation as to the foregoing, Provider and Provider's staff agree to permit ABH to release any information relating to Provider or Provider staff's professional credentials, including but not limited to education, training and experience, to any Government Authority.

E. Assignment: Provider shall not assign, transfer or convey any of its rights, duties or obligations under this Agreement without ABH's written consent. ABH may assign, transfer or convey any of its rights, duties or obligations under this Agreement without Provider's written consent.

F. Non-Exclusivity: This Agreement is non-exclusive and shall not prevent Provider or ABH from entering into similar agreements with other similar organizations or providers.

G. No Third Party Beneficiaries: This Agreement is not intended to create any rights or remedies in any third parties.

H. Schedules: The Schedules attached hereto are an integral part of this Agreement and all references herein to this Agreement shall include such Schedules.

I. Non-enforcement Not to Constitute Waiver: The failure of either party to insist upon strict performance of any terms or conditions of this Agreement shall not be deemed a waiver of the term or condition or any remedy that each party has with respect to that term or condition nor shall it preclude a subsequent default by reason of the failure to perform.

J. Transition after Termination or Expiration of Agreement: In the event that this Agreement is terminated for any reason or if ABH does not offer the

Provider a new Agreement for the same or similar service, the Provider will assist in the orderly transfer of data required by ABH and will assist in the orderly cessation of operations under this Agreement.

- K. **Choice of Law:** Provider agrees to be bound by the laws of the State of Connecticut and the federal government where applicable, and agrees that this Agreement shall be construed and interpreted in accordance with Connecticut law and Federal law where applicable.
- L. **Compliance with Law and Policy:** Provider shall comply with all pertinent provisions of local, state and federal laws and regulations as well as ABH's policies and procedures applicable to the Provider's programs as specified in this Agreement.
- M. **Arbitration:** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration in Connecticut administered by the American Arbitration Association under its Commercial Arbitration Rules. Any arbitrator(s) shall be a neutral independent attorney expert in the subject matter of this Agreement generally. The arbitrator shall have authority to award compensatory and equitable relief only and no authority to award punitive damages or multiple damages. The decision of the arbitrator shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Unless otherwise agreed by the parties thereto, the arbitration shall be held within sixty (60) days after the appointment of the arbitrator(s) to the extent practicable. No person shall serve as an arbitrator unless such person expresses availability and willingness to abide by the schedule for the arbitration set forth herein. The Federal Rules of Evidence shall apply to the arbitration. The arbitrators shall not, and shall have no authority to, award any indirect, incidental, consequential, special, exemplary or punitive damages. Judgment upon the award rendered by the arbitrator(s) shall be supported by written opinion and may, at the option of either party be enforced in law or in equity by any court having jurisdiction hereof. Any proceeding under this section shall be held in Hartford, Connecticut unless the parties to a proceeding agree in writing to an alternative location. The costs of the arbitration shall be borne equally by the parties thereto and each party shall bear its own attorneys' fees.

XII. HIPAA Provisions (This section may not be indexed the same as the rest of this Agreement)

- A. If Provider is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Provider must comply with all terms and conditions of this Section of the Agreement. If Provider is not a Business Associate under HIPAA, this Section of the Agreement does not apply to Provider for this Agreement.

- B. Provider is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, “Services” under the Agreement in accordance “with all applicable federal and state law regarding confidentiality, which includes but is not limited to (“HIPAA”), more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
- C. ABH is a “covered entity” as that term is defined in 45 C.F.R. § 160.103; and
- D. Provider, on behalf of ABH performs functions that involve the use or disclosure of “individually identifiable health information,” as that term is defined in 45 C.F.R. § 160.103; and
- E. Provider is a “business associate” of ABH, as that term is defined in 45 C.F.R. § 160.103; and
- F. Provider and ABH agree to the following in order to secure compliance with the HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.

G. Definitions

- 1. “Business Associate” shall mean Provider.
- 2. “Covered Entity” shall mean ABH.
- 3. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.
- 4. “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- 5. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and parts 164, subparts A and E.
- 6. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- 7. “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- 8. “Secretary” shall mean the Secretary of the Department of Health and Human “Services” or his designee.
- 9. “More stringent” shall have the same meaning as the term “more stringent” in 45 C.F.R. § 160.202.
- 10. “This Section of the Agreement” refers to the HIPAA Provisions stated herein, in their entirety.

11. “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.
12. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and parts 164, subpart A and C.

H. Obligations and Activities of Business Associates

1. Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Agreement or as Required by Law.
2. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Agreement.
3. Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
4. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Agreement.
5. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Agreement or any security incident of which it becomes aware.
6. Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Agreement to Business Associate with respect to such information.
7. Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
8. Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to make PHI available for amendment pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
9. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by,

Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

10. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
11. Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with paragraph I of this Section of the Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
12. Business Associate agrees to comply with any state law that is more stringent than the Privacy Rule.

I. Permitted Uses and Disclosure by Business Associate.

1. **General Use and Disclosure Provisions.** Except as otherwise limited in this Section of the Agreement, Business Associate may use or disclose PHI to perform functions, activities, or "Services" for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
2. **Specific Use and Disclosure Provisions.**
 - a) Except as otherwise limited in this Section of the Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
 - b) Except as otherwise limited in this Section of the Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - c) Except as otherwise limited in this Section of the Agreement, Business Associate may use PHI to provide Data Aggregation

“Services” to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

J. Obligations of Covered Entity

1. Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate’s use or disclosure of PHI.
2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate’s use or disclosure of PHI.
3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of PHI.

K. Permissible Requests by Covered Entity

1. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Agreement.

L. Term and Termination

1. **Term.** The Term of this Section of the Agreement shall be effective as of the date the Agreement is effective and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
2. **Termination for Cause.** Upon Covered Entity’s knowledge of a material breach by Business Associate, Covered Entity shall either:
 - a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or

- b. Immediately terminate the Agreement if Business Associate has breached a material term of this Section of the Agreement and cure is not possible; or
- c. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

3. Effect of Termination

- a. Except as provided in paragraph “b” below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- b. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Agreement to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

M. Miscellaneous Provisions

- 1. **Regulatory References.** A reference in this Section of the Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- 2. **Amendment.** The Parties agree to take such action as is necessary to amend this Section of the Agreement from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- 3. **Survival.** The respective rights and obligations of Business Associate shall survive the termination of this Agreement.
- 4. **Effect on Agreement.** Except as specifically required to implement the purposes of this Section of the Agreement, all other terms of the Agreement shall remain in force and effect.
- 5. **Construction.** This Section of the Agreement shall be construed as broadly as necessary to implement and comply with the Privacy

Standard. Any ambiguity in this Section of the Agreement shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

6. **Disclaimer.** Covered Entity makes no warranty or representation that compliance with this Section of the Agreement will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, Contractors or agents, or any third party to whom Business Associate has disclosed PHI pursuant to this Agreement. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.

7. **Indemnification.** The Business Associate shall indemnify and hold the Covered Entity harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards, or other expenses, of any kind or nature whatsoever, including, without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this Section of the Agreement.

XIII. Binding Nature: Signatories to this Agreement represent and warrant that they have the unqualified authority to bind the parties and their employees and subcontractors to the terms of this Agreement. If the Provider has any arrangements with subcontractors to render Services to MFP/MH Waiver Service program Participants, the Provide shall insure that all such subcontracts are amended if necessary to incorporate the terms and conditions contained in this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, sealed and delivered this Agreement as of the execution date below.

By : _____
(The Provider)

Name: _____ Date: _____

Title: _____

Telephone Number: _____

Tax I.D. No. _____

Email address _____

ADVANCED BEHAVIORAL HEALTH, INC

By: _____
Samuel Moy, Ph.D.
President and CEO

Execution Date: _____